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December 16, 1993

HAND DELIVERED

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: Ex Parte Notice - MM Docket 92-260

Dear Mr. Caton:

In accordance with Section 1.1200 et seq. of the Commission's rules, this is to advise that on Thursday, December 16, 1993, Robert S. Jacobs, Vice President and General Counsel, Time Warner New York City Cable Group ("Time Warner"); Larry Pestana, Vice President of Engineering, Paragon Cable Manhattan; Martin J. Schwartz of Rubin, Baum, Levin, Constant & Friedman; and Arthur H. Harding of Fleischman and Walsh met with Patrick Donovan, Deputy Chief, Cable Services Division, Mass Media Bureau, and Mary Beth Richards, Chief, Enforcement Division, Common Carrier Bureau, to discuss issues affecting the above-referenced proceeding. The discussion involved presenting Time Warner's position on cable home wiring as reflected in the attached materials to be associated with the above-referenced docket.

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A copy of this _ex parte_ notice was filed with the Commission and delivered to all of the above-named Commission personnel on December 16, 1993.

Very truly yours,

Arthur H. Harding

Arthur H. Harding

AHH/sbc/12243
cc: Patrick Donovan
Mary Beth Richards

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FEDERAL COMMUNICATIONS COMMISSION
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CABLE RATE REGULATION
MM Docket No. 92-266

Cable Rate Issues Relating To Multiple Dwelling Units And Commercial Accounts

- The FCC should continue to allow a uniform rate structure, including bulk discounts, for various classes or sizes of residential multiple dwelling unit (MDU) buildings, such as apartments, condos and co-ops.

  -- The FCC Rate Order correctly determined that consumers should have the opportunity to benefit from the efficiencies and cost-savings which can be realized in serving MDUs.

  -- Contrary to Liberty's baseless allegations, Time Warner offers a uniform 25 percent bulk MDU discount on various cable service packages. This uniform discount structure is available to all residential MDUs with 15 or more units throughout Manhattan.

  -- Contrary to Liberty's false assertion, Time Warner has marketed its bulk rates to all eligible buildings in Manhattan. Time Warner has notified by direct mail all eligible buildings of the availability of a bulk rate contract. This is in contrast to Liberty, which generally limits its marketing efforts to affluent neighborhoods and whose promotional literature states: "Liberty serves exclusively the better residential buildings of New York." Liberty engages in blatant economic redlining.

  -- Time Warner's bulk discount for MDUs is priced in excess of cost, and thus is not "predatory." Indeed, Time Warner's non-discriminatory bulk rate structure has been approved both by New York City and the New York State Commission on Cable Television.

  -- Time Warner's bulk rate is higher than Liberty's most comparable bulk rate; Time Warner adheres to its published bulk rate schedule and does not undercut Liberty's rates at particular MDU buildings. In addition, Time Warner's bulk rate contracts about which Liberty complains are non-exclusive and are terminable on three months notice; Liberty's contracts, by contrast, are generally from five to ten years in duration and purport to be exclusive.

  -- Time Warner's MDU bulk rate structure satisfies both prongs of the test adopted in the FCC Rate Order.

* The bulk discount rate structure is available uniformly to all residential MDU buildings in the franchise area with 15 or more units.

* Time Warner derives economic benefit from providing a bulk rate discount, inter alia, because it receives payment for every unit in the MDU. In non-bulk MDU buildings, Time Warner's average penetration is only about 60 percent.

-- If cable operators are prohibited from offering bulk contracts to MDUs, such a ban should apply equally to all multichannel video programming distributors (MVPDs).

• The uniform rate structure requirement should not apply to commercial accounts such as bars and restaurants.

-- Such accounts often demand "customized" channel line-ups and service offerings. Thus, each commercial account constitutes its own unique category in the cable operator's rate structure.

-- Due to the fact that more people are likely to view cable service in commercial establishments, programmers often charge higher rates to the cable operator.

-- The Commission has itself properly recognized that the rationale for requiring service to additional outlets within a residential dwelling at no extra charge cannot be fairly applied in a commercial context.

• The uniform rate structure requirement should not apply to hotels and similar transient occupancy facilities.

-- Video programming distribution for hotels is highly competitive.

* National companies like Spectradyne specialize in serving hotels and have long offered pay-per-view and free-to-guest services (e.g., HBO, CNN, ESPN and other cable networks). Such companies have favorable long-term programming contracts, often at rates better than those available to cable operators, and they negotiate long-term contracts with national hotel chains as well as independents.

* Spectradyne, the largest video programming distributor to hotels, by itself provided PPV service to over 707,000 rooms in 2,544 hotels and

free-to-guest channels in over 333,000 rooms in over 1,000 hotels nationally, as of June 30, 1993.

* Hotels also have the ability to operate (directly or through an independent contractor) a SMATV/MATV system on premises or to contract with an MMDS or wireless cable company (e.g., Liberty Cable). Many hotels employ such facilities or services in lieu of franchised cable television service, and other hotels frequently cite these alternatives in the course of negotiating with franchised cable operators.

* Liberty has actively solicited business from all the better hotels in New York City (see Attachment 1). As a result, such hotels have approached Time Warner to see if it would provide a lower rate. This is how competition should work. Liberty urges that Time Warner be handcuffed, unable to respond to a lower rate proposal from Liberty.

-- Hotels do not lend themselves to uniform rates because hotels demand and receive customized service packages to meet the special needs of the hotel and its particular clientele.

  * Hotels generally choose the number of channels they want and the particular programming to be delivered by the cable operator. Customized channel line-ups are often created so that certain channels can be used for video services provided by the hotel or an independent vendor under contract to the hotel.

  * Hotel accounts are typically negotiated individually in light of factors such as location, room rate, occupancy level, season, state of the economy, whether premium and pay-per-view services are to be provided, and a host of other variables rendering uniformity impossible.

  * Because hotels are often part of a chain (local, regional, national), they have additional leverage in negotiating cable rates.

-- Cable operators can more profitably offer lower rates to hotels than to residential accounts.

  * Programming costs for hotel accounts are generally lower than for residential customers, and other cost savings and efficiencies typically attach to hotel service. In many hotels, for example, the

hotel has a pre-existing distribution system and Time Warner is not contractually responsible for constructing or maintaining internal cable facilities or for delivering signal to the television sets in the rooms but only for delivery to an interface with the hotel's distribution system.

* Time Warner's negotiated hotel rates are above cost and are not predatory. In Manhattan, Liberty Cable recently has been able to win contracts for at least four large luxury hotels with over 3,700 rooms. Many other hotels in Manhattan have contracts with Spectradyne, Guestserve, OnCommand, or a similar service, or have SMATV/MATV facilities.

- Cable operators should be free to meet any rate offered to an MDU by unfranchised MVPDs.

  -- If the FCC truly seeks to promote competition rather than to simply give unfranchised MVPDs such as Liberty an unfair competitive advantage, it must allow cable operators to meet the competition.

  -- Liberty shamelessly admits that it has "relied" on the prospect of Time Warner being locked into a rigid uniform rate structure, so that Liberty can easily pluck selected MDU buildings away from Time Warner by undercutting the prevailing regulated price.

  -- Only if cable operators are allowed to respond to lower prices offered by competitors will consumers realize the full benefits of competition and choice among MVPDs.

  -- Obviously, cable operators would not be allowed to charge less than cost in an effort to thwart competition.

- The FCC should deregulate cable rates in MDUs upon a showing that the effective competition test has been met.

  -- The 1992 Cable Act establishes a clear preference for competition over regulation. Rate regulation should be avoided under any circumstances where the statutory effective competition test is met.

  -- Fierce competition exists today for the right to provide service to MDU buildings. SMATV operators have no franchise requirements or other regulatory barriers to entry, and do not face the same capital obligations as franchised cable operators or the many franchise-mandated non-capital costs, such as franchise fees, PEG access support. I-Nets, etc.

- -- The FCC should recognize MDU buildings as a sub-category within the franchise area for applying the effective competition test.
- -- In any case where alternative MVPD service is available to 50 percent of the multiple dwelling units in a franchise area, and at least 15 percent subscribe to such service, MDU rates should be deregulated, even if single family household rates remain subject to regulation.

- The uniform rate structure requirement is primarily a matter of local jurisdiction.
  - -- The Commission has properly concluded that the uniform rate structure requirement, Sec. 623(d), must be read in conjunction with the rate discrimination provision, Sec. 623(e).
  - -- Thus, primary responsibility for enforcement of both Sec. 623(d) and (e) should be left to local franchising authorities, as advocated by NATOA, so long as cable operators remain free to offer reasonable discounts to senior citizens and the hearing impaired.
  - -- The FCC should become involved only in the event of a dispute between the franchising authority and the cable operator.

Y CABLE
TELEVISION
Suite 3026, NY, NY 10020
Fax (212) 956-1818

Dear

Liberty is able to reduce your cable TV cost while providing the same programs, better quality of reception and more responsive service. We simply install a 3 foot dish on your roof at our expense and interconnect with the wiring system of the hotel. The enclosed from The New York Times describes how we are breaking the cable TV monopoly in New York by providing bulk service direct from satellite. Liberty is becoming very popular with better residential buildings and fine hotels.

We would be happy to provide the same programming line-up you currently receive in the for per room. Should you wish to substitute Showtime for HBO, the rate would be per room or suite regardless of the number of TV sets.

Installation takes no longer than a few hours and does not disrupt or disturb any existing facilities. Furthermore, Liberty does not charge any additional fees for operation or maintenance of the equipment and we guarantee to have a technician assigned to your hotel who is immediately available to service any type of call within the hour.

At your request, we will review in confidence your current agreement with MCTV to explore how Liberty service may be substituted. Meanwhile we would be happy to show you any of our sites to view our system and validate the clarity of our picture quality. In the meantime, I will have our chief engineer conduct a survey of the premises.

Sincerely,

Peter O. Price
President